

Introduced by Senator Emmerson

February 18, 2011

An act to amend Sections 20001, 23217, 23540, 23546, 23550, 23550.5, 23560, and 23566 of the Vehicle Code, relating to Vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 780, as introduced, Emmerson. Vehicles: driving offenses: punishment.

(1) Existing law requires, if a person is convicted of a specified driving-under-the-influence (DUI) offense and the offense occurred within 10 years of 2, or 3 or more prior specified DUI offenses that resulted in a conviction, that the person be punished by enhanced penalties, and that the person's privilege to operate a motor vehicle be revoked by the department for a period of 2, 3, 4, or 5 years, as applicable.

This bill would delete the 10-year limitation. In addition, the bill would increase the punishment for driving under the influence of alcohol or a drug without causing bodily injury with 2 prior separate convictions for specified DUI offenses, from imprisonment in a county jail for not less than 120 days nor more than one year, to imprisonment in the state prison, nor in a county jail for not less than 180 days no more than one year.

(2) Existing law requires the driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person to immediately stop the vehicle at the scene of the accident and provide specified personal information to the injured person or the occupants of the other vehicle and to any traffic or police officer at the scene of the accident. In the case of the death of any person and the absence of a traffic or police officer at the scene of the accident,

the driver of the vehicle is required to report the accident to the nearest office of the Department of the Highway Patrol or office of a duly authorized police authority and submit the required personal information.

Existing law requires, among other things, that a person who flees the scene of the crime after committing vehicular manslaughter with gross negligence, vehicular manslaughter while intoxicated, or gross vehicular manslaughter while intoxicated, upon conviction of any of those crimes, in addition and consecutive to the punishment prescribed, be punished by an additional term of imprisonment of 5 years in the state prison.

This bill would add murder to the above-described crimes, thereby subjecting a person who flees the scene of the crime after committing murder, upon a conviction, to an additional 5-year state prison term.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20001 of the Vehicle Code is amended
2 to read:

3 20001. (a) The driver of a vehicle involved in an accident
4 resulting in injury to a person, other than himself or herself, or in
5 the death of a person shall immediately stop the vehicle at the
6 scene of the accident and shall fulfill the requirements of Sections
7 20003 and 20004.

8 (b) (1) Except as provided in paragraph (2), a person who
9 violates subdivision (a) shall be punished by imprisonment in the
10 state prison, or in a county jail for not more than one year, or by
11 a fine of not less than one thousand dollars (\$1,000) nor more than
12 ten thousand dollars (\$10,000), or by both that imprisonment and
13 fine.

14 (2) If the accident described in subdivision (a) results in death
15 or permanent, serious injury, a person who violates subdivision
16 (a) shall be punished by imprisonment in the state prison for two,
17 three, or four years, or in a county jail for not less than 90 days
18 nor more than one year, or by a fine of not less than one thousand
19 dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or
20 by both that imprisonment and fine. However, the court, in the
21 interests of justice and for reasons stated in the record, may reduce
22 or eliminate the minimum imprisonment required by this paragraph.

1 (3) In imposing the minimum fine required by this subdivision,
2 the court shall take into consideration the defendant's ability to
3 pay the fine and, in the interests of justice and for reasons stated
4 in the record, may reduce the amount of that minimum fine to less
5 than the amount otherwise required by this subdivision.

6 (c) A person who flees the scene of the crime after committing
7 a violation of Section 191.5-~~of~~, or paragraph (1) of subdivision (c)
8 of Section 192, of the Penal Code, *or after committing a murder*
9 *as charged under Section 187 of the Penal Code*, upon conviction
10 of any of those sections, in addition and consecutive to the
11 punishment prescribed, shall be punished by an additional term of
12 imprisonment of five years in the state prison. This additional term
13 shall not be imposed unless the allegation is charged in the
14 accusatory pleading and admitted by the defendant or found to be
15 true by the trier of fact. The court shall not strike a finding that
16 brings a person within the provisions of this subdivision or an
17 allegation made pursuant to this subdivision.

18 (d) As used in this section, "permanent, serious injury" means
19 the loss or permanent impairment of function of a bodily member
20 or organ.

21 SEC. 2. Section 23217 of the Vehicle Code is amended to read:

22 23217. (a) The Legislature finds and declares that some repeat
23 offenders of the prohibition against driving under the influence of
24 alcohol or drugs, when they are addicted or when they have too
25 much alcohol in their systems, may be escaping the intent of the
26 Legislature to punish the offender with progressively greater
27 severity if the offense is repeated one or more times ~~within a~~
28 ~~10-year period~~. This situation may occur when a conviction for a
29 subsequent offense occurs before a conviction is obtained on an
30 earlier offense.

31 ~~The~~

32 (b) ~~The~~ Legislature further finds and declares that the timing of
33 court proceedings should not permit a person to avoid aggravated
34 mandatory minimum penalties for multiple separate offenses
35 ~~occurring within a 10-year period~~. It is the intent of the Legislature
36 to provide that a person be subject to enhanced mandatory
37 minimum penalties for multiple offenses ~~within a period of 10~~
38 ~~years, regardless of whether~~ *when the convictions are obtained in*
39 ~~the same sequence as the~~ *for those* offenses had been committed
40 *obtained*.

1 ~~Nothing~~

2 (c) *Nothing* in this section requires consideration of judgment
3 of conviction in a separate proceeding that is entered after the
4 judgment in the present proceeding, except as it relates to violation
5 of probation.

6 ~~Nothing~~

7 (d) *Nothing* in this section or the amendments to Section 23540,
8 23546, 23550, 23560, 23566, 23622, or 23640 made by Chapter
9 1205 of the Statutes of 1984 affects the penalty for a violation of
10 Section 23152 or 23153 occurring prior to January 1, 1985.

11 SEC. 3. Section 23540 of the Vehicle Code is amended to read:

12 23540. (a) If a person is convicted of a violation of Section
13 23152 and ~~the offense occurred within 10 years~~ *person was*
14 *previously convicted* of a separate violation of Section 23103, as
15 specified in Section 23103.5, 23152, or 23153, that resulted in a
16 conviction, that person shall be punished by imprisonment in the
17 county jail for not less than 90 days nor more than one year and
18 by a fine of not less than three hundred ninety dollars (\$390) nor
19 more than one thousand dollars (\$1,000). The person's privilege
20 to operate a motor vehicle shall be suspended by the department
21 pursuant to paragraph (3) of subdivision (a) of Section 13352. The
22 court shall require the person to surrender the driver's license to
23 the court in accordance with Section 13550.

24 (b) Whenever, when considering the circumstances taken as a
25 whole, the court determines that the person punished under this
26 section would present a traffic safety or public safety risk if
27 authorized to operate a motor vehicle during the period of
28 suspension imposed under paragraph (3) of subdivision (a) of
29 Section 13352, the court may disallow the issuance of a restricted
30 driver's license required under Section 13352.5.

31 ~~(e) This section shall become operative on September 20, 2005.~~

32 SEC. 4. Section 23546 of the Vehicle Code is amended to read:

33 23546. (a) If a person is convicted of a violation of Section
34 23152 and ~~the offense occurred within 10 years~~ *person was*
35 *previously convicted* of two separate violations of Section 23103,
36 as specified in Section 23103.5, 23152, or 23153, or any
37 combination thereof, that resulted in convictions, that person shall
38 be punished by imprisonment in the *state prison, or in a county*
39 *jail* for not less than ~~120~~ *180* days nor more than one year, and by
40 a fine of not less than three hundred ninety dollars (\$390) nor more

1 than one thousand dollars (\$1,000). The person's privilege to
2 operate a motor vehicle shall be revoked by the Department of
3 Motor Vehicles as required in paragraph (5) of subdivision (a) of
4 Section 13352. The court shall require the person to surrender his
5 or her driver's license to the court in accordance with Section
6 13550.

7 (b) A person convicted of a violation of Section 23152
8 punishable under this section shall be designated as a habitual
9 traffic offender for a period of three years, subsequent to the
10 conviction. The person shall be advised of this designation pursuant
11 to subdivision (b) of Section 13350.

12 SEC. 5. Section 23550 of the Vehicle Code, as amended by
13 Section 3 of Chapter 301 of the Statutes of 2010, is amended to
14 read:

15 23550. (a) If a person is convicted of a violation of Section
16 23152 and ~~the offense occurred within 10 years~~ *person was*
17 *previously convicted* of three or more separate violations of Section
18 23103, as specified in Section 23103.5, or Section 23152 or 23153,
19 or any combination thereof, that resulted in convictions, that person
20 shall be punished by imprisonment in the state prison, or in a
21 county jail for not less than 180 days nor more than one year, and
22 by a fine of not less than three hundred ninety dollars (\$390) nor
23 more than one thousand dollars (\$1,000). The person's privilege
24 to operate a motor vehicle shall be revoked by the Department of
25 Motor Vehicles pursuant to paragraph (7) of subdivision (a) of
26 Section 13352. The court shall require the person to surrender the
27 driver's license to the court in accordance with Section 13550.

28 (b) A person convicted of a violation of Section 23152
29 punishable under this section shall be designated as a habitual
30 traffic offender for a period of three years, subsequent to the
31 conviction. The person shall be advised of this designation pursuant
32 to subdivision (b) of Section 13350.

33 SEC. 6. Section 23550.5 of the Vehicle Code, as amended by
34 Section 4 of Chapter 301 of the Statutes of 2010, is amended to
35 read:

36 23550.5. (a) A person is guilty of a public offense, punishable
37 by imprisonment in the state prison or confinement in a county
38 jail for not more than one year and by a fine of not less than three
39 hundred ninety dollars (\$390) nor more than one thousand dollars
40 (\$1,000) if that person is convicted of a violation of Section 23152

1 or 23153, and the ~~offense occurred within 10 years~~ *person was*
2 *previously convicted* of any of the following:

3 (1) A prior violation of Section 23152 that was punished as a
4 felony under Section 23550 or this section, or both, or under former
5 Section 23175 or former Section 23175.5, or both.

6 (2) A prior violation of Section 23153 that was punished as a
7 felony.

8 (3) A prior violation of paragraph (1) of subdivision (c) of
9 Section 192 of the Penal Code that was punished as a felony.

10 (b) Each person who, having previously been convicted of a
11 violation of subdivision (a) of Section 191.5 of the Penal Code, a
12 felony violation of subdivision (b) of Section 191.5, or a violation
13 of subdivision (a) of Section 192.5 of the Penal Code, is
14 subsequently convicted of a violation of Section 23152 or 23153
15 is guilty of a public offense punishable by imprisonment in the
16 state prison or confinement in a county jail for not more than one
17 year and by a fine of not less than three hundred ninety dollars
18 (\$390) nor more than one thousand dollars (\$1,000).

19 (c) The privilege to operate a motor vehicle of a person
20 convicted of a violation that is punishable under subdivision (a)
21 or (b) shall be revoked by the department under paragraph (7) of
22 subdivision (a) of Section 13352, unless paragraph (6) of
23 subdivision (a) of Section 13352 is also applicable, in which case
24 the privilege shall be revoked under that provision. The court shall
25 require the person to surrender the driver's license to the court in
26 accordance with Section 13550.

27 (d) A person convicted of a violation of Section 23152 or 23153
28 that is punishable under this section shall be designated as a
29 habitual traffic offender for a period of three years, subsequent to
30 the conviction. The person shall be advised of this designation
31 under subdivision (b) of Section 13350.

32 SEC. 7. Section 23560 of the Vehicle Code is amended to read:

33 23560. If a person is convicted of a violation of Section 23153
34 and the ~~offense occurred within 10 years~~ *person was previously*
35 *convicted* of a separate violation of Section 23103, as specified in
36 Section 23103.5, 23152, or 23153 that resulted in a conviction,
37 that person shall be punished by imprisonment in the state prison,
38 or in a county jail for not less than 120 days nor more than one
39 year, and by a fine of not less than three hundred ninety dollars
40 (\$390) nor more than five thousand dollars (\$5,000). The person's

1 privilege to operate a motor vehicle shall be revoked by the
2 Department of Motor Vehicles pursuant to paragraph (4) of
3 subdivision (a) of Section 13352. The court shall require the person
4 to surrender the driver's license to the court in accordance with
5 Section 13550.

6 SEC. 8. Section 23566 of the Vehicle Code, as amended by
7 Section 6 of Chapter 301 of the Statutes of 2010, is amended to
8 read:

9 23566. (a) If a person is convicted of a violation of Section
10 23153 and ~~the offense occurred within 10 years~~ *person was*
11 *previously convicted* of two or more separate violations of Section
12 23103, as specified in Section 23103.5, or Section 23152 or 23153,
13 or any combination of these violations, that resulted in convictions,
14 that person shall be punished by imprisonment in the state prison
15 for a term of two, three, or four years and by a fine of not less than
16 one thousand fifteen dollars (\$1,015) nor more than five thousand
17 dollars (\$5,000). The person's privilege to operate a motor vehicle
18 shall be revoked by the Department of Motor Vehicles pursuant
19 to paragraph (6) of subdivision (a) of Section 13352. The court
20 shall require the person to surrender the driver's license to the
21 court in accordance with Section 13550.

22 (b) If a person is convicted of a violation of Section 23153, and
23 the act or neglect proximately causes great bodily injury, as defined
24 in Section 12022.7 of the Penal Code, to any person other than the
25 driver, and ~~the offense occurred within 10 years~~ *person was*
26 *previously convicted* of two or more separate violations of Section
27 23103, as specified in Section 23103.5, or Section 23152 or 23153,
28 or any combination of these violations, that resulted in convictions,
29 that person shall be punished by imprisonment in the state prison
30 for a term of two, three, or four years and by a fine of not less than
31 one thousand fifteen dollars (\$1,015) nor more than five thousand
32 dollars (\$5,000). The person's privilege to operate a motor vehicle
33 shall be revoked by the Department of Motor Vehicles pursuant
34 to paragraph (6) of subdivision (a) of Section 13352. The court
35 shall require the person to surrender the driver's license to the
36 court in accordance with Section 13550.

37 (c) If a person is convicted under subdivision (b), and ~~the offense~~
38 ~~for which the person is convicted occurred within 10 years~~ *person*
39 *was previously convicted* of four or more separate violations of
40 Section 23103, as specified in Section 23103.5, or Section 23152

1 or 23153, or any combination of these violations, that resulted in
2 convictions, that person shall, in addition and consecutive to the
3 sentences imposed under subdivision (b), be punished by an
4 additional term of imprisonment in the state prison for three years.

5 The enhancement allegation provided in this subdivision shall
6 be pleaded and proved as provided by law.

7 (d) A person convicted of Section 23153 punishable under this
8 section shall be designated as a habitual traffic offender for a period
9 of three years, subsequent to the conviction. The person shall be
10 advised of this designation pursuant to subdivision (b) of Section
11 13350.

12 (e) A person confined in state prison under this section shall be
13 ordered by the court to participate in an alcohol or drug program,
14 or both, that is available at the prison during the person's
15 confinement. Completion of an alcohol or drug program under this
16 section does not meet the program completion requirement of
17 paragraph (6) of subdivision (a) of Section 13352, unless the drug
18 or alcohol program is licensed under Section 11836 of the Health
19 and Safety Code, or is a program specified in Section 8001 of the
20 Penal Code.